IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER ST.NO.12462 OF 2006
WITH
CIVIL APPLICATION ST.NO.12464 OF 2006
WITH
APPEAL FROM ORDER NO.209 OF 2006
WITH
CIVIL APPLICATION NO.288 OF 2006

Municipal Corporation of Gr. Mumbai. ..Applicant.

V/s.

Mr. Ronnie Gadbriel Menezes. ..Respondent.

Mr.R.A.Malandkar for applicant.

Mr.G.R.Mishra for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 7, 2006.

P.C. :

1. Heard counsel for the parties.

2. Admit.

3. Mr.Mishra waives notice for respondent. As short question is involved, both these appeals are taken up for final disposal forthwith by consent.

4. Both these appeals can be disposed of by this common Judgment as the orders impugned in these appeals are arising from the proceedings between the

same parties being L.C.Suit No.127 of 2004. The said suit was filed by the respondent/plaintiff for following reliefs:

> "a) It be declared that the Inspection Report/Notice dated 24.12.2003 given by sanitary Inspection of P/North Ward Office is illegal, bad-in-law, not maintainable and not binding upon the Plaintiff.
>
> b) That the defendants their agents servants, officers and representatives be restrained by an permanent injunction order of this Hon'ble Court from acting upon or enforcing the said Inspection Report/Notice dated 4.12.2003 against the suit business run and conducted in the name and style as M/s.Reuben Hotel (Real Royal) at Tank Lane Chawl, Opp D'Souza Market, Orlem Malad(W), Mumbai 400 004 and from seizing the articles, things, materials and belongings of the Plaintiff lying and being at the suit business premises in any manner whatsoever.
>
> c) Interim and ad-interim reliefs in terms of prayer clauses (b) hereinabove be granted in favour of the Plaintiff.
>
> d) Costs of the suit be provided for to the Plaintiff.
>
> e) Such other and further reliefs as the nature and circumstances of the case may require.

The above reliefs were claimed by the respondents on the assertion that the authorities had issued license in favour of the respondents which enables them to conduct business of eating house. However, the Inspector of the Corporation submitted report on 24th December, 2003 pointing out certain breaches committed by the respondent/plaintiff in the

following terms.

> "Findings:-
>
> In my inspection, it is found that party is holding a licence for tea shop u.s.394 of B.M.C. Act. However, at the time of inspection, you are conducting the trade of eating House, without Proper licence. It is seen that he uses the name M/s.Real Royal Fast Food Corner on board.
>
> 2) 5 Bench and 16 chairs in service room and 7 table and 28 chairs outside of the Hotel premises.
>
> 2 Big rice stainer, with about 6 kg. Boiles rice.
>
> Kadai 4 Nos. with about 50 big plates and 75 small plates.
>
> Bowels and tea 8 poons in Forks.
>
> Noodles about 2 kg. Prepared 5 kg. unprepared."

5. The respondent/plaintiff essentially challenged this report in the suit, as filed. During the pendency of the said suit, the respondent/plaintiff took out Notice of Motion No.109 of 2004. The trial Court declined to grant ad-interim relief. Against that decision the respondent/plaintiff carried the appeal before this court being Appeal From Order No.168 of 2004. It is however, common ground that no ad-interim relief was issued in favour of the respondent/plaintiff. According to the Corporation, the licence which was

pressed into service on behalf of the respondent/plaintiff purportedly issued in January, 2003 was valid till 31st December, 2004 only. In that sense, after 31st December, 2004 the relief claimed in the suit as filed by the respondent/plaintiff in fact had worked out. Nevertheless, the Notice of Motion, which was filed by the respondent/plaintiff being Notice of Motion No.109 of 2004 was heard and allowed in terms of prayer clause (a) thereof by Judgment and order dated 1st September, 2005. Prayer clause (a) of the said Notice of Motion reads thus:

> "a) Pending the hearing and final disposal of the suit, the Defendants their agents, servants, officers and representatives be restrained by a permanent injunction or of this Hon'ble Court from taking acting upon or enforcing the said Inspection Report/Notice dated 24.12.2003 against the suit business run and conducted in the name and style as M/s.Reuben Hotel (Real Royal) at Tank Lane, Chawl, Opp. D'souza Market, Orlem, Malad(West), Mumbai 400 064 and from seizing the articles, things, materials and belongings of the Plaintiff lying and being at the suit business premises in any manner whatsoever."

6. According to the Corporation, since the licence itself had expired, it was inappropriate for the Trial Court to make the notice of Motion absolute, that too in absence of any amendment

carried out by the respondent/plaintiff to the main suit and consequential reliefs claimed, as were required in the fact situation of the present case. Against this decision, the present appeal from order arising from the Appeal From Order stamp No.12462 of 2006 has been brought before this court. While aforesaid notice of Motion No.109 of 2004 was pending, the respondent/plaintiff took out another Notice of Motion No.2652 of 2006 in the said suit before the Lower Court praying for the following relief.

> "(a) That pending the hearing and final disposal of the suit, the Defendants, their servants, agents and representatives be directed to forthwith renew the Licence u.s.394 of the BMC act, bearing No.009036 dated 31st May, 2003 for further period;"

Even this Notice of Motion has been made absolute by the separate Judgment and order dated 1st September, 2005. Correctness of which has been questioned by way of Appeal from order No.209 of 2006.

7. Having considered rival submission and after perusing the relevant documents on record, I have no hesitation in accepting the stand taken on behalf of the defendant-corporation that the suit as originally

filed and reliefs claimed therein are worked out after expiry of the licence period, which was issued in favour of the respondent/plaintiff permitting him for carry on eating house business, till 31st December, 2004. After 31st December, 2004, as no licence has been obtained by the respondent/plaintiff, the question of granting any injunction on the basis of inspection report which had served its purpose during the validity period of earlier licence, does not arise. I am also in agreement that the stand taken on behalf of the appellant/Corporation that it was not open to the City Civil Court to entertain the second Notice of Motion which is for direction against the corporation and its officers to forthwith renew the licence under section 394 of the Act for the further period. There is substance in the argument canvassed on behalf of the appellant/Corporation that at best the City Civil Court would have directed the officers of the appellant to consider the grant or non-grant of the licence but the direction which has been issued by the Lower Court requiring the renewal of the licence is clearly in excess of jurisdiction. Moreover, the issue as to whether the decision of the Licensing authority is correct or otherwise, can be put in issue only before the Chief Judge of the Small Causes

Court, in view of the statutory provision under subsection (5) of section 394 of the Act. Even for that reason, it was not open for the City Civil Court to issue direction as has been issued in the subsequent Notice of Motion.

. Taking overall view of the matter, I have no hesitation in setting aside both the orders passed by the lower Court which are impugned in the respective appeals. Accordingly, both the appeals succeed. Notice of Motions filed by the respondent/plaintiff are dismissed. It is however, made clear that it will be open to the respondent to take recourse to such remedy as may be permissible by law for issuance of licence, which proceedings will have to be decided on its own merits in accordance with the law.

8. At this stage, counsel for the respondent/plaintiff submits that the other licences issued in respect of suit structure are still operating and valid till 2007. The plaintiff/-respondent apprehends that relying on this order, officials of Corporation will proceed to seize the articles and belongings of the plaintiff lying in the premises in question. Needless to observe that such coercive action can be resorted to by the officials

of the Corporation only if the plaintiff was to carry on business which is not permitted and can be conducted only after obtaining proper licence in that behalf from the Corporation.

9. It is also clarified that the other proposed action of the Corporation against the suit structure which has been resorted to will have to be decided on its own merits in accordance with the law.

10. Appeals as well as civil applications disposed of accordingly.